

# EXHIBIT 8



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

NETLIST, INC., ( CAUSE NO. 2:22-CV-203-JRG  
)  
Plaintiff, ( )  
vs. ( )  
MICRON TECHNOLOGY, INC., ( )  
et al., ( ) MARSHALL, TEXAS  
( OCTOBER 23, 2023  
Defendants. ) 9:00 A.M.

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MOTION HEARING

BEFORE THE HONORABLE ROY S. PAYNE  
UNITED STATES MAGISTRATE JUDGE

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1 Mr. Halbert's deposition. So Micron identified Mr. Halbert as  
2 a potential witness first time on September 5th. That was  
3 original discovery cutoff, and that's the deadline for the  
4 parties to serve subpoenas -- serve original discovery  
5 requests or responses.

6 And on September 8th Micron identified Mr. Halbert as  
7 a 30(b)(6) corporate representative, and since then we  
8 immediately asked Micron to provide availability of  
9 Mr. Halbert for deposition based on his identity as a fact  
10 witness. Micron gave us no response until September 15th.  
11 That's the first time they informed us that Mr. Halbert has  
12 some plan to travel internationally.

13 And since then we kept asking Micron to provide us the  
14 date for the deposition, and Micron finally offered a date of  
15 September 30th. That's after we filed the motion and after  
16 our repeated requests for the deposition of this witness.

17 THE COURT: So what are you seeking regarding  
18 Mr. Halbert?

19 MS. ZHAO: So during the deposition, Mr. Halbert  
20 brought him with notes and some of the testimony that has  
21 never been disclosed in the past. Given the late deposition,  
22 we want to preclude Micron to rely on anything that's new,  
23 never discussed in the previous discovery period time.

24 THE COURT: So you're saying that because he was not  
25 offered for deposition when you wanted him, you want the

1 Defendant to be precluded from what?

2 MS. ZHAO: Relying on his testimony offered after  
3 fact discovery.

4 THE COURT: You mean being called as a witness at  
5 trial?

6 MS. ZHAO: Yes, Your Honor. And also -- so he  
7 provide some notes as evidence. Those are facts that did not  
8 disclose during the discovery period, so Micron should not be  
9 allowed to rely on the notes either.

10 THE COURT: The notes you're saying were not  
11 disclosed during discovery?

12 MS. ZHAO: Yes, Your Honor. And those notes  
13 actually talk about a third-party document set, and those are  
14 in Halbert's opinion what are the dates those documents were  
15 published, and those search terms that could be run to  
16 identify those documents from JEDEC.

17 THE COURT: Well, the standard rule is that  
18 documents that are not disclosed during discovery can't be  
19 used thereafter unless there's some motion for leave, so I'll  
20 hear from Micron on that.

21 But -- Mr. Rueckheim, do you have plans to use  
22 Mr. Halbert as a witness at trial?

23 MR. RUECKHEIM: We do, Your Honor.

24 THE COURT: And has he been deposed?

25 MR. RUECKHEIM: He was deposed, yes. Netlist

1     deposed him on September 20th. I'm sorry. I'm looking at --  
2     their CEO. Their CEO was deposed few days earlier on  
3     September 20th, and their CFO was deposed after Mr. Halbert.  
4     So it's -- they're coming up here asking to preclude a witness  
5     by Micron when they offered their witnesses later.

6             But we do -- Mr. Halbert is a third party, and so  
7     Mr. Halbert served an expert report in this case, and they  
8     wanted Mr. Halbert because he was also a fact witness. He was  
9     present at these JEDEC meetings. And so they wanted  
10    Mr. Halbert's deposition. We thought it would make more sense  
11    after opening expert reports, but they demanded to have it  
12    even though he's traveling overseas. And so we worked with  
13    Mr. Halbert, a third party, to give a deposition from Paris,  
14    and he did. He brought notes with him, which are his expert  
15    analysis, and that was included into his expert report. He  
16    did an expert report of what happened at JEDEC. It's not  
17    Micron information, Your Honor. And they've going to have an  
18    opportunity to depose him on expert reports.

19            THE COURT: All right. And is it your position that  
20    the notes should be exhibits at the trial?

21            MR. RUECKHEIM: Your Honor, the -- it's part of his  
22    expert report. We wanted to give -- it's expert analysis, and  
23    it was before the expert report deadline, but we wanted to  
24    give them the early part of that analysis because he was being  
25    deposed anyway. And so I -- it's all part of his expert

1 report which was timely served, if that helps.

2 THE COURT: All right. But these aren't evidence;  
3 these aren't derivation notes or --

4 MR. RUECKHEIM: This is for him to remember.  
5 There's a lot of dates involved.

6 THE COURT: Okay. Well, I feel safe in saying that  
7 those will not be exhibits. His testimony certainly may be  
8 offered, but --

9 So Ms. Zhao, let me follow up now that I have a little  
10 more context. You intend to take his deposition as an expert?

11 MS. ZHAO: I believe so, Your Honor.

12 THE COURT: And so what are you asking the Court to  
13 exclude?

14 MS. ZHAO: So let me explain a little bit about the  
15 notes.

16 So the whole notes thing is about actually during the  
17 discovery there was some third-parties' production of  
18 documents, and some of them are confidential documents that  
19 are only available to the members of JEDEC. So Micron is  
20 using Mr. Halbert as a way to offer some facts to show that  
21 those documents were published at a certain date, and the  
22 members of JEDEC can run search terms to identify those  
23 documents, and those should be disclosed during the fact  
24 discovery period of time.

25 THE COURT: Well, if they're in the possession of a

1 report which was timely served, if that helps.

2 THE COURT: All right. But these aren't evidence;  
3 these aren't derivation notes or --

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20 using Mr. Halbert as a way to offer some facts to show that  
21 those documents were published at a certain date, and the  
22 members of JEDEC can run search terms to identify those  
23 documents, and those should be disclosed during the fact  
24 discovery period of time.

25 THE COURT: Well, if they're in the possession of a

1 party, they should be disclosed during fact discovery. Do you  
2 have evidence that Micron had possession of these documents?

3 MS. ZHAO: So even though Micron emphasized that  
4 Mr. Halbert is a third party, but actually two things that  
5 need to address.

6 First of all, during his deposition, Mr. Halbert said he  
7 didn't prepare those notes. The notes actually came from  
8 Micron. So he just reviewed the notes and discussed it during  
9 the deposition. And that's in our motion as well. And so  
10 it's in Micron's possession. They prepared it. It should  
11 have been able to disclose to us earlier.

12 And more importantly, because it's the documents  
13 generated by JEDEC, a third party, if they disclosed it a  
14 month earlier, we could have served subpoenas on third party  
15 to actually examine the stuff of JEDEC to discuss when these  
16 documents were uploaded or published or searchable.

17 And to be clear, even though Mr. Halbert has been the  
18 representative at JEDEC, he was retained as an expert, not a  
19 fact witness, by Samsung in a previous Samsung action. And  
20 during the pretrial conference, Judge Gilstrap specifically  
21 instructed the parties that Mr. Halbert shouldn't be acting as  
22 the CEO of JEDEC; he shouldn't be speaking on behalf of JEDEC.

23 So had him being disclosed earlier, had his notes been  
24 disclosed to us earlier, we could actually go to JEDEC to  
25 serve subpoena on them and get someone actually can speak on



1       behalf of that organization.

2               THE COURT:   Well, so I'm still confused about what  
3       it is you are asking for as relief with respect to the notes.

4               MS. ZHAO:   So as a fact witness, he shouldn't be  
5       allowed to rely on the notes or testify anything about the  
6       notes at trial.   And to the extent he played a role as an  
7       expert witness, he shouldn't be relying on any facts not  
8       disclosed during discovery either.

9               THE COURT:   When you say 'notes', if these are notes  
10       that have been prepared to refresh his recollection, that's  
11       one thing.   Are these notes something that were created during  
12       the JEDEC meetings or what --

13              MS. ZHAO:   If I may just show you the notes from the  
14       elmo, that might help to explain a little bit.

15              THE COURT:   Well, I mean, tell me -- you want to --  
16       the Court to order that Mr. Halbert not be allowed to look at  
17       certain notes when he's testifying?

18              MR. SHEASBY:  I think I can short circuit this, Your  
19       Honor --

20              THE COURT:   Okay.

21              MR. SHEASBY:  -- if I may.

22              So Mr. Halbert was disclosed as a fact witness.   He's  
23       also a paid expert for them, so they've retained this fellow  
24       for some period of time.   He -- his fact testimony is that a  
25       set of documents were publicly available on certain dates.

1 That fact testimony was not given us until September 30th,  
2 after the close of fact discovery. We've been repeatedly  
3 asking for his deposition.

4 If they would have given that testimony earlier that  
5 that -- they had a witness who was going to testify as to  
6 publicly available documents, we would have subpoenaed JEDEC  
7 to disprove it. But now it's impossible for us to subpoena  
8 JEDEC to disprove it because they sprung him on us as a fact  
9 witness at a late possible moment in time, and they didn't  
10 give his deposition until well after the close of fact  
11 discovery. So there's no way for us to use -- to do anything  
12 to disprove his, quote, factual testimony on public  
13 availability.

14 THE COURT: Well, do you have evidence that as to  
15 his fact testimony about JEDEC that he is not a true  
16 third-party witness?

17 MR. SHEASBY: Yes, Your Honor, we do. He's  
18 retained by Micron. He's being paid by Micron. They have  
19 an engagement letter with him.

20 MS. ZHAO: And to add to that point, Micron also  
21 designated him as a 30(b)(6) witness as a corporate  
22 representative.

23 THE COURT: I mean, this is coming up in a motion  
24 to compel a deposition, and -- but it sounds like what you're  
25 seeking is to strike fact testimony.

1 MS. ZHAO: If I may, our motion also adds to  
2 preclude Micron to offer testimony or rely on this witness  
3 testimony if they didn't offer them during fact discovery  
4 under Rule 37.

5 THE COURT: Well, I'm going to deny this as a motion  
6 to compel as to Mr. Halbert, but if these issues materialize  
7 after you take his deposition, you can file it as a motion to  
8 strike testimony and we can take it up that way.

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